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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,905	03/30/2001	Russell F. McKnight	2089	8934

24333 7590 12/08/2004

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EXAMINER

BAUTISTA, XIOMARA L

ART UNIT PAPER NUMBER

2179

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/821,905

Applicant(s)

MCKNIGHT ET AL.

Examiner

X L Bautista

Art Unit

2179

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-21 is/are allowed.
- 6) ☒ Claim(s) 1-12, 22-24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, with respect to claims 1, 7 and 22, filed 10/14/2004 have been fully considered but they are not persuasive.

Applicant argues (page 10, lines 1-12), "Cluts and PC Magazine do not disclose, teach or suggest means for receiving a criteria set including at least one user-defined classification...Cluts discloses selecting individual songs or predetermined collections of music...PC Magazine discloses a similar method of songs selection, wherein a user may select songs by up to three general pre-determined classes...[a]n advantageous aspect of the present invention is a criteria set of desired media content including at least one non-predetermined, user-defined classification for at least one piece of media content."

In response, Cluts discloses a "more like" function that allows a subscriber to use a seed song (media) to identify other songs (user-defined classification) that are similar to the seed song, and to add the new songs (non-predetermined) to the current playlist (abstract; col. 2, lines 33-62; col. 13, lines 63-67; col. 14, lines 1-11; col. 16, lines 54-62).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-10, 22, 23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts* (US 5,616,876) and the article entitled Jukeboxes, published by PC Magazine in 1999 (hereinafter PCMagazine).

Claims 1, 7 and 28:

Cluts discloses a system and method for selecting and playing audio selections (music) on the basis of subjective content (abstract; col. 1, lines 7-10). Cluts teaches user-defined classification and categorization of media content (col. 2, lines 30-48; col. 3, lines 1-36; col. 15, lines 47-55); receiving a criteria set of desired media content; analyzing a tagged piece of media content to determine if it is in accordance with the criteria set (col. 11, lines 34-48; col. 14, lines 4-11); and compiling a collection of media content based upon the user-defined classification and criteria set (col. 13, lines 63-67; col. 15, lines 14-31). Cluts explains that users may classify and search by style. Cluts teaches that media content is collected and presented to the user based upon a criteria set (col. 1, lines 50-63; col. 2, lines 49-62; col. 3,

lines 1-29; col. 13, lines 63-67; col. 15, lines 26-31, 47-55; col. 16, lines 54-62; col. 17, lines 9-12, 46-49; col. 19, lines 8-11).

Cluts also teaches that users may obtain desirable services or programming at a time and date specified by the user (col. 1, lines 36-40) but it does not teach a criteria set including a time period that refers to a duration of the collection of media content. However, PC Magazine discloses a software jukebox that can be downloaded from MusicMatch. As the user collection grows, MusicMatch offers playback flexibility via its Auto DJ function, which lets users set a playback duration and select songs by up to three general classes, such as artist, tempo, genre, mood, or situation (page 1, last paragraph). Therefore, it would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify Cluts's method for selecting music to include a criteria set including a time period because the user is enabled to define not only what type of media content should be collected but also specific segments and stipulate the duration of the transmission or collection of the media content so that only what is of his interest will be downloaded, streamed, played, or stored.

Claims 2 and 8:

Cluts teaches an audio file as media content (abstract; col. 4, lines 38-67).

Claims 3, 9 and 23:

PCMagazine teaches MusicMatch (software jukebox), which includes media content (audio file) in an MP3 format (page 1).

Claims 4 and 10:

Cluts teaches an input device for receiving input from the user (col. 3, lines 3-8).

Claim 22:

See claims 1 and 20. Cluts teaches that the user can rate a piece of media content (col. 2, lines 30-48; col. 3, lines 1-36; col. 11, lines 34-48; col. 13, lines 63-67; col. 14, lines 1-11; col. 15, lines 14-31, 47-55).

4. Claims 5, 6, 11, 12 and 24, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts/PCMagazine* and *R. W. Picard* (article entitled Affective Wearables, published in 1997).

Claims 5 and 11:

Cluts/PCMagazine does not teach a physiological input including at least one of heart rate and motion detection. However, Picard discloses a wearable system (affective wearable) that enables recognition of its wearer's affective patterns (abstract). Picard teaches that a wearable computer can learn to recognize physical and physiological patterns, especially those,

which correspond to affective states (fear, stress, relax). Picard teaches that the system monitors heart rate, blood pressure, etc., (page 90, left and right column). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cluts's interactive network to include Picard's teaching of a criteria set including a physiological input because as Picard says, the system gathers important information about the wearer that may be used in affect analysis.

Claims 6, 12, 24, and 27:

Cluts does not teach a schedule input that is an activity planned and documented on a scheduling system. However, Picard teaches an affective assistant agent that can intelligently filter the user's schedule, taking into account the user's emotional state or degree of activity (page 91, right column, second paragraph). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to modify Cluts's invention to include Picard's teaching of schedule input because the system plans activities based on the wearer's emotional or physical state.

Claim 26:

See claims 5 and 6. Picard teaches that the wearable system sets the criteria by analyzing affective states, environment, wearer's position, viewpoint, etc. (page 90, left and right column; page 91, left column-second

paragraph; page 91, right column-first paragraph).

*Allowable Subject Matter*

5. Claims 13-21 are allowed.

6. The following is an examiner's statement of reasons for allowance:

Prior art of record fails to teach a method for classifying and collecting media content based upon user-defined classification and a criteria set including information from physiological input, which includes a heart rate counter and motion detection.

R. W. PICARD (article entitled Affective Wearables, published in 1997) discloses a wearable system that enables recognition of its wearer's affective patterns. Picard teaches that a wearable computer can learn to recognize physical and physiological patterns, especially those, which correspond to affective states. Picard teaches that the system monitors heart rate, blood pressure, etc. (page 90, left and right columns). Picard fails to teach or suggest a method for classifying and collection media content by using physiological information such as the user's heart rate and motion.

PC Magazine (article entitled Jukeboxes, published in 1999) discloses a software jukebox from MusicMatch, which allows users to select songs by up to three general classes, such as artist, tempo, genre, mood, or situation. PC



Magazine fails to teach or suggest that a criteria set including information from physiological input, which includes a heart rate counter and motion detection, is used for classifying and collecting the songs.

Kiyoko YOKOYAMA et al (article entitled Human Interface for Heart Rate Control During-Bicycle Ergometer Exercise, published in 2000)

discloses a human interface designed to maintain good condition for a driver at all times using the driver's own physiological signal (heart rate). Movies and music were controlled using physiological signals, which reflect human states; the music and movies were used for presenting information and to investigate the effectiveness of these media on perception of human status and biological control. Yokoyama fails to teach or suggest that the physiological information, such as the heart rate, was used to classify and collect media content.

George COGGINS (US 5,792,047) discloses an interactive bio-feedback system that supports the collection of physiological parameter values (information) of a user being monitored. The physiological parameter information is collected and processed to determine and present the user with presentation states (multimedia) including measured parameter values and other determined items, in combination with the image of the user. Coggins fails to teach or suggest that the physiological

parameter information is used to classify and collect media content.

Drew DEVITO (US 6,001,065) discloses a method and apparatus for measuring and performing real-time FFT (Fast Fourier Transformation) analysis of bioelectrical signals (EEG and EMG) for the control of systems. The system uses EEG signals, picked up from a user playing a game; the signals are processed to control the video game. The system includes a plurality of physiological sensors in contact with the user. The signals are representative of the user's emotions or state of mind, and are used to alter the game environment according to the user's sensed state. DeVito fails to teach or suggest that physiological information such as the user's heart rate is used to classify and collect media content.

### *Conclusion*

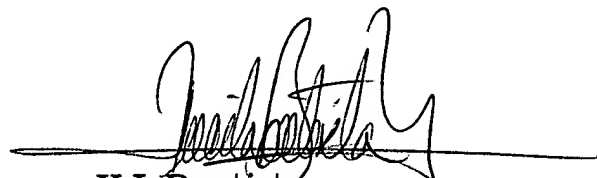
7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to X L Bautista whose telephone number is (571) 272-4132. The examiner can normally be

reached on Monday-Thursday 8:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on (7571) 272-4136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



X L Bautista  
Primary Examiner  
Art Unit 2179

xlb  
6 December 2004